

AMENDMENT FOR PUBLIC COMMENT
Public Comment Period is scheduled for 3-30-12
by the Joint Standing Committee on Environment and Natural Resources

This amendment is being posted for the purpose of receiving public comment during the "public comment period" being held by the Joint Standing Committee on Environment and Natural Resources on March 30, 2012. The amendment incorporates a number of proposals submitted to the Joint Standing Committee on Environment and Natural Resources during the course of the committee's worksessions. The committee has not taken a position on the substance of this amendment.

LD 1853
**An Act to Improve Environmental Oversight and Streamline Permitting
for Mining in Maine**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA c. 3, subchapter I, Art. 9 is enacted to read:

ARTICLE 9

MAINE METAL MINERAL MINING ACT

§490-AAA. Short title

This article may be cited as the Maine Metal Mineral Mining Act.

§490-BBB. Findings; purpose

The Legislature finds and declares that:

1. It is the policy of this state to foster the conservation and development of the State's natural resources.
2. Discoveries of metallic sulfide deposits have resulted in exploration activities and may lead to the development of one or more mines.
3. Metallic sulfide minerals may react, when exposed to air and water, to form acid rock drainage. If the mineral products and waste materials associated with metallic sulfide mining operations are not properly managed and controlled, they can cause damage to the environment, impact human health, and degrade the quality of life of the impacted community.

4. The concerns surrounding metallic mineral mining warrant special regulatory measures.

5. Metallic mineral mining may be an important contributor to Maine's economic vitality and lead to significant job opportunities. The economic benefits of metallic mineral mining shall occur only under conditions that assure that the environment, natural resources, and public health and welfare are adequately protected.

6. These circumstances warrant a consolidated permitting process under the jurisdiction of the Department of Environmental Protection.

§490-CCC. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Affected area. "Affected area" means an area outside of the mining area where the land surface, surface water, ground water, or air resources are determined through an environmental impact assessment to be potentially affected by mining operations.

2. Beneficiation. "Beneficiation" means the treatment of ore to liberate or concentrate its valuable constituents. Beneficiation operations include crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching (to produce a final or intermediate product that does not undergo further beneficiation or processing), gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and heap, dump, vat, tank, and in situ leaching.

3. Closure. "Closure" means [a definition for "closure" may be suggested at the public comment period.]

4. Contamination. As applied to ground water, "contamination" means non-attainment of water quality standards, the cause of which are attributable to the mining operation as:

A. Specified in CMR 231 – Primary Drinking Water Standards, promulgated pursuant to Title 22, section 2611; or

B. Demonstrated by a statistically significant change in measured parameters which indicates deterioration of water quality determined through assessment monitoring.

As applied to surface water, "contamination" means lowering the quality of any classified body of water below such classification the cause of which is attributable to the mining operation either by itself or in combination with other discharges.

5. Fund. "Fund" means the Mining Oversight Fund created in Title 36, part 4, ch. 371, section 2866.

6. Metallic product. "Metallic product" means a commercially salable mineral or metal produced primarily for its metallic mineral content in its final marketable form or state.

7. Mining. "Mining," "mining operation," or "mining activity" means activities, facilities, or processes necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals, and includes the bulk sampling, advanced exploration, extraction or beneficiation of metallic minerals as well as waste storage and other stockpiles and reclamation activities, but not including test sampling methods conducted in accordance with rules adopted by the department such as test boring, test drilling, hand sampling and digging of test pits with a limited maximum surface opening or methods determined by the department to cause minimal disturbance of soil or vegetative cover otherwise subject to permitting requirements pursuant to MEPDES Stormwater Discharge Permits for construction and industrial discharge issued by the department pursuant to 40 CFR 122.26.

8. Mining area. "Mining area" means an area of land described in the permit application and subject to approval by the department from which earth material is removed in connection with metallic mineral mining, the lands on which material from that mining is deposited, the lands on which beneficiating or treatment facilities, including ground water and surface water management treatment systems, are located, the lands on which water reservoirs used in the mining process are located, and auxiliary lands which are used.

9. Mining permit. "Mining permit" and "mining license" means a permit issued under this article for conducting metallic mineral mining and reclamation operations.

10. Metallic mineral. "Metallic mineral" means any ore or material to be excavated from the natural deposits on or in the earth for its metallic mineral content, to be used for commercial or industrial purposes. "Metallic mineral" does not include thorium or uranium.

11. Metallic mineral operator. "Metallic mineral operator" or "operator" means a permittee or other person who is engaged in, or who is preparing to engage in, mining operations for metallic minerals, whether individually or jointly, or through agents, employees, or contractors.

12. Permittee. "Permittee" means a person who holds a mining permit.

13. Postclosure monitoring period. "Postclosure monitoring period" means a period following closure of a metallic mineral mine during which the permittee is

required to conduct monitoring of ground water and surface water and other environmental parameters as specified in the mining permit.

14. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the department, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits and the filling or sealing of shafts and underground workings with solid materials unless necessary for protection of ground water or safety.

15. Tailings impoundment. "Tailings impoundment" means land on which is deposited, by hydraulic or other means, the material that is separated from the metallic product in the beneficiation or treatment of minerals including any surrounding dikes constructed to contain the material.

§490-DDD. Metallic mineral mining; administration and enforcement; rules; regulation or control by local units of government

1. Administration; jurisdiction; rules. The department shall administer and enforce this article in all areas of the State, including the unorganized territories, in order to regulate metallic mineral mining. The provisions of chapter 3, subchapter 1, articles 6, 7, and 8-A, chapter 13, and section 420-D, do not apply to projects reviewed under this article. Except for permits required under the natural resource protection laws, chapter 3, subchapter 1, article 5-A; waste discharge licenses required under chapter 3, subchapter 1, article 2, section 413 for discharges of pollutants to ground water via an underground injection well or discharges of pollutants to surface waters of the State, including MEPDES Stormwater Discharge Permits for construction and industrial discharge issued by the department pursuant to 40 CFR 122.26; permits required under the protection and improvement of air laws, chapter 4; and Federal Emergency Management Act floodplain certification projects reviewed under this article do not require any other permits from the department. In addition to other powers granted to it, the department shall adopt rules to carry out its duties under this article, including standards for construction, operation, closure, postclosure monitoring, reclamation, and remediation of a metallic mineral mine. Rules adopted under this article are major substantive rules for purposes of Title 5, chapter 375, subchapter 2-A and Title 38, section 341-H. Rules regulating metallic mineral mining adopted under the authority of other statutory provisions have no continuing force or effect after the department has adopted the rules authorized above.

2. Land Use Regulation Commission. The Land Use Regulation Commission may not regulate a project regulated by the department under this article, except that the commission may:

A. Perform planning functions of the commission including, but not limited to, floodplain permitting under the Federal Emergency Management Act and establishing

and enforcing minimal dimensional requirements such as setback and minimum lot size requirements; and

B. Undertake zoning and rezoning of land use districts for activities regulated under this article.

3. Municipal authority. This article does not prevent municipalities from regulating or controlling mining or reclamation activities that are subject to this article, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities, except that municipalities may not enact stricter standards than those contained in this article and in the rules adopted by the department pursuant to this article.

§490-EEE. Mining permit; application procedure

1. Permit required. A person may not engage in mining of metallic minerals without a permit issued by the department under this article.

2. Application procedure. An application for a mining permit shall be submitted to the department in a format to be developed by the department. The application shall include all of the following:

A. Fee. The fees established in section 352. All costs incurred by the department in processing an application, up to the maximum processing fee provided for in section 352, must be paid for by the applicant.

B. Environmental impact assessment. An environmental impact assessment for the proposed mining operation that describes the natural and human-made features, including, but not limited to, flora, fauna, hydrology, geology, and geochemistry, and baseline conditions in the proposed mining area and the affected area that may be impacted by the mining, and the potential impacts on those features from the proposed mining operation. The environmental impact assessment shall address practicable alternatives for the affected area. The environmental impact assessment must be approved by the department.

C. Environmental protection, reclamation, and closure plan. A mining, environmental protection, reclamation, and closure plan ("the plan") for the proposed mining operation, including beneficiation operations, that will reasonably minimize the actual and potential adverse impacts on natural resources, the environment, and public health and safety within the mining area and the affected area. The plan shall address the unique issues associated with nonferrous metal mineral mining and shall include all of the following:

- (1) A description of materials, methods, and techniques that will be utilized.
- (2) Information that demonstrates that the methods, materials, and techniques proposed to be utilized are capable of accomplishing their stated objectives in protecting the environment and public health. The required information may consist of results of actual testing, modeling, documentation by credible independent testing and certification organizations, or documented applications in similar uses and settings.
- (3) Plans and schedules for interim and final reclamation of the mining area and the affected area following cessation of mining operations, plans and schedules for measures taken during suspension of operations, including contemporaneous reclamation, to the extent practicable.
- (4) A description of the geochemistry of the ore, waste rock, overburden, peripheral rock, spent leach material, and tailings, including characterization of leachability, reactivity and acid-forming characteristics.
- (5) A mining operations closure plan.
- (6) Provisions for the control and monitoring of acid-forming waste products and other waste products from the mining process.
- (7) Storm and surface water management provisions.
- (8) A water quality monitoring plan.

D. Contingency plan. A contingency plan that includes an assessment of the risk to the environment or public health and safety associated with potential significant incidents or failures and describes the operator's notification and response plans. When the application is accepted as complete for processing by the department, the applicant shall provide a copy of the contingency plan to each municipality having jurisdiction over the affected area or, in the unorganized territory, to the county commissioners for the county in which the mine may be located. The department may require amendments to the contingency plan as part of the environmental protection, reclamation and closure plan.

E. Financial assurance. Financial assurance as described in section 490-HHH.

3. Violations. A mining permit shall not be issued or transferred to a person if the department has determined that person to be in violation of this article, rules adopted under this article, the permit, or an order of the department under this article, unless the person has corrected the violation or the person has agreed in writing to correct the violation pursuant to a compliance schedule approved by the department.

4. Criteria for approval. Subject to subsection 3, the department shall approve a mining permit whenever it finds the following:

- A. Financial capacity and technical ability.** The applicant has the financial capacity and technical ability to develop the project in a manner consistent with applicable state environmental standards and with the provisions of this article.
- B. Effect on the natural resources.** Notwithstanding paragraph D, the mining operation will not unreasonably adversely affect existing uses, air quality, water quality or other natural resources.

 - (1) In making a determination under this paragraph regarding a mining operation's effects on natural resources regulated by the Natural Resources Protection Act, article 5-A of this subchapter, the department shall apply the same standards applied under the Natural Resources Protection Act.
 - (2) The applicant must demonstrate that there is reasonable assurance that public water supplies are not affected by the mining operations.
- C. Soil types.** The mining operation will be built on soil types that are suitable to the nature of the mining operation.
- D. Ground water.** There is reasonable assurance that discharges of pollutants from the project will not violate applicable water quality standards. Notwithstanding sections 465-C and 470-A, discharges to ground water may occur within the mining area, but such discharges may not result in contamination of ground water beyond the mining area. The department must require ground water monitoring as close as practicable to the boundary of the mining area. Mining operations, including the discharge to ground water in the mining area, may not result in the contamination of surface water.

 - D-1. Surface water.** The mining operation will not cause a discharge of pollutants into surface waters or discharge ground water containing pollutants into surface waters in violation of article 4-A or section 414-A.

- E. Infrastructure.** The applicant has made adequate provision of utilities, including water supplies, wastewater facilities and solid waste disposal, required for the mining operations, and the mining operations will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- F. Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure. Mining operations may be placed in flood plains or flood hazard areas provided that they are designed, constructed, operated and reclaimed in a manner that complies with the approval criteria in this subsection 4 and the Natural Resources Protection Act.
- G. Safety.** The applicant has made adequate provisions for protection of public safety.

5. Coordination with Natural Resources Protection Act. If a person submits an application for a mining permit under this article and an application for a permit under the Natural Resources Protection Act, article 5-A, the department shall process the applications in a coordinated fashion and issue a joint decision. The coordinated permit process shall include consolidating any public hearings.

6. Public and local participation. In addition to provisions for public participation provided pursuant to Title 5, chapter 375, the following provisions apply to an application for a mining permit.

- A. Notification.** An applicant shall give, at the time the application is submitted to the department, written notice to the municipal officers of the municipality in which the proposed mine may be located, and to each municipality having jurisdiction over the affected area or, in the unorganized territory, to the county commissioners for the county in which the mine may be located, and shall publish notice of the application in a newspaper of general circulation in the area.
- B. Preliminary notice.** Sixty days prior to submitting an application to the department, the applicant shall notify by certified mail the municipal officers of the municipality in which the site is located and to each municipality having jurisdiction over the affected area or, in the unorganized territory, the county commissioners. The applicant shall provide a copy of the notice to the Director of the Bureau of Geology and Natural Areas.
- C. Public hearing.** The department shall hold an adjudicatory public hearing within the municipality in which the mining operation may be

located or, in the unorganized territory, in a convenient location in the vicinity of the proposed mining operation. Administrative expenses of a hearing held pursuant to this paragraph must be paid for by the applicant.

D. Automatic municipal intervenor status. The municipal officers, or their designees, from each municipality in which the mine may be located, or, in the unorganized territory, the county commissioners for each county in which the mine may be located, have intervenor status if they request it within 60 days of notification under paragraph A. The intervenor status granted under this subsection applies in any proceeding for a permit under this article. Immediately upon the commissioner's receipt of such a request, the intervenors have all rights and responsibilities commensurate with this status.

E. Financial assistance. The commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under paragraph D, not to exceed \$50,000. The department shall adopt rules governing payment by an applicant to the department of fees necessary for the department to award intervenor assistance grants and governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the department. Allowable expenses include, without limitation, hydrogeological studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses not used in support of direct, substantive participation in the proceedings before the department, including attorney's fees related to court appeals, are not eligible for reimbursement under this subsection. Expenses otherwise eligible under this section that are incurred by the municipality or county commissioners after notification pursuant to paragraph A are eligible for reimbursement under this paragraph only if a completed application is accepted by the department. The department shall also establish rules governing the process by which an intervenor under paragraph D may gain entry to the proposed mining site for purposes of reasonable inspection and site investigations under the auspices of the department. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§490-FFF. Mining permit; duration; termination; revocation; transfer; amendment.

1. Duration of permit. A mining permit issued by the department shall remain in effect until terminated or revoked by the department. The department shall conduct annual reviews of the mining operations and assess compliance with the permit terms.

2. Termination of permit. The department may terminate a mining permit, or request surrender of the mining permit, after public notice under one or more of the following conditions:

- A. The permittee has not commenced construction of mining facilities or conducted actual mining activities covered by the mining permit within four years after the effective date of the mining permit.
- B. The permittee has completed final reclamation of the mining area and affected area and requests the termination of the mining permit and the department determines all of the following:
 - (1) The mining operation has not polluted or impaired the air, water, or other natural resources.
 - (2) The permittee has otherwise fulfilled all conditions determined to be necessary by the department to protect the public health, safety, and welfare and the environment.
 - (3) The requirements for the postclosure monitoring period have been satisfied.

3. Revocation of permit. The department may revoke a mining permit after public notice pursuant to section 490-JJJ.

4. Transfer of permit. A mining permit may be transferred to a new owner or operator with prior written approval of the department after public notice as follows:

- A. The person acquiring the mining permit shall submit to the department on forms provided by the department a request for transfer of the mining permit and shall provide the financial assurance required under section 490-HHH.
- B. The person acquiring the mining permit shall accept the conditions of the existing mining permit and adhere to the requirements set forth in this article.
- C. If the permittee is determined by the department to be in violation of this article or the rules promulgated under this article at the mining site involved in the transfer, then the mining permit shall not be transferred to a person until the permittee has completed the necessary corrective actions or the person acquiring the mining permit has entered into a written consent agreement to correct all of the violations.
- D. The transferee shall demonstrate to the department's satisfaction the technical and financial capacity and intent to: (1) comply with all terms

and conditions of the applicable license, and (2) satisfy all applicable statutory or regulatory criteria. This includes providing adequate evidence of the financial assurance required by Section 490-HHH.

5. Amendment of permit. A mining permit may be amended after public notice as follows:

- A. The permittee may submit to the department a request to amend the mining permit to address anticipated changes in the mining operation, including, if applicable, amendments to the environmental impact assessment and to the mining, reclamation, and environmental protection plan.
- B. The department may require a mining permit to be amended if the department determines that the terms and conditions of the mining permit are not providing reasonable protection of the environment, natural resources, or public health and safety.

§490-GGG. Performance, operation, and reclamation standards

1. Performance standards. Rules adopted by the department shall be performance-based to the extent feasible and the department may require that the applicant implement control devices or measures necessary to achieve the performance standards. Where the applicant proposes a control device or measure, it must demonstrate that there is reasonable assurance that the device or measure will achieve the performance standard.

2. Suspension of mining operations. If mining operations are suspended for a continuous period exceeding 90 days, the permittee shall provide notice to the department and take actions, consistent with its environmental protection, reclamation and closure plan, to maintain, monitor, and secure the mining area and shall conduct any interim sloping or stabilizing of surfaces necessary to protect the environment, natural resources, or public health and safety in accordance with the permit. If mining operations are suspended for a continuous period exceeding 180 days, the permittee shall be considered to have ceased operations and all requirements applicable to closure shall take effect unless the department agrees in writing to delay the implementation of the closure plan based on a written submission by the permittee that demonstrates that the operations are expected to re-commence within a reasonable period of time as determined by the department. The department may require partial closure of a facility.

3. Water quality monitoring. A permittee shall conduct ground water and surface water monitoring in accordance with the provisions of the permit during mining operations, during suspension of mining operations, and during the postclosure monitoring period. The postclosure monitoring period shall be at least 30 years following cessation of mining, subject to the following conditions:

- A. The permittee shall provide to the department a written request to terminate the postclosure monitoring not less than 18 months before the proposed termination date and shall provide the department with technical data and information demonstrating the basis for the termination. The department shall extend the postclosure monitoring period in increments of up to 20 years unless the department determines, approximately one year before the end of a postclosure monitoring period or postclosure incremental monitoring period, that there is no significant potential for surface water or ground water contamination resulting from the mining operation.
- B. The department may shorten the postclosure monitoring period at any time upon determining that there is no significant potential for water contamination resulting from the mining operation.

4. Reclamation. The following reclamation requirements will apply:

- A. Subject to paragraph B, a permittee shall begin final reclamation of a mining area and affected area within two years of the date of cessation of mining operations and shall complete reclamation within the time set forth in the mining, reclamation, and environmental protection plan approved by the department.
- B. Upon written request of a permittee, the department may approve an extension of time to begin or complete final reclamation.
- C. Both the mining area and the affected area shall be reclaimed with the goal that the affected area shall be returned to the ecological conditions that approximate premining conditions subject to changes caused by nonmining activities or other natural events. Any open pits shall be configured for long-term geotechnical stability and shall have safety berms or fencing installed during closure to prevent ingress into the open pit. Any water in the pit shall not be a threat to any environmental receptors or ground water. Any portion of the mining area owned by the applicant may be used for any legal purposes, provided that the use is not harmful to human health or the environment, and provided that all necessary licenses, permits and approvals are secured for the use.

5. Inspection and maintenance. A permittee shall fully comply with all inspection, maintenance, and monitoring requirements contained in the permit. A closed facility shall be inspected at least twice per year. All waste pile, impoundments, or any other pile or storage facility shall be inspected by a licensed civil engineer with expertise in structural stability of waste piles and impoundments. The engineer shall either certify that the facilities are in good condition and not susceptible to failure due to significant weather, seismic, or other events or identify the corrective measures that must immediately be undertaken by the permittee. The inspections shall document that all

permit requirements, including storm water control, sediment and erosion control, dust migration, access controls, land use restrictions, waste pile or impoundment stabilization measures, treatment systems are fully compliant with the permit conditions and that there are no known conditions that could present a threat to public health or the environment. An inspection report shall be provided to the department within 21 days of the inspection.

§490-HHH. Financial assurance

1. Duration of financial assurance. A permittee shall maintain financial assurance during mining operations until the department determines that all reclamation has been completed and for a postclosure monitoring period as determined under section 490-GGG, subsections 4 and 5, except that financial assurance shall be released immediately upon termination of a mining permit under section 490-FFF, subsection 2, paragraph A. The department may require financial assurance to remain in effect for as long as the facility and any other associated waste material could create a threat to human health or the environment.

2. Coverage of financial assurance. The financial assurance required under subsection 1 shall apply to all mining and reclamation operations subject to the mining permit and be sufficient to cover the cost to administer, and to hire a third party to implement, activities necessary for the investigation, monitoring, closure, treatment, remediation, reclamation, operation and maintenance under the Environmental Protection, Reclamation and Closure Plan as well as necessary environmental protection measures, including remediation of any contamination of the air, surface water, or ground water.

3. Form of financial assurance. The financial assurance may consist of a surety bond, escrow, cash, certificate of deposit, trust, irrevocable letter of credit issued by a financial institution acceptable to the department, or other equivalent security, or combination thereof, provided that the department approves the financial assurance as proposed by the applicant. The financial assurance shall be in a form that cannot be cancelled, withdrawn, revoked, or otherwise reduced without the express written consent of the commissioner after a finding that the reduced amount is appropriate given the conditions at the facility including the potential cost of long-term maintenance, monitoring, and the response to any episodic maintenance.

4. Updates to financial assurance. A permittee shall provide to the department an annual statement of financial responsibility and the department may require that the bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other security, as applicable, be adjusted to assure that the financial assurance is sufficient for the purposes of subsection 2.

5. Failure to provide financial assurance. Failure to provide financial assurance under this section constitutes grounds for the department to order immediate suspension of activities at a mining operation, including the removal of metallic product from the site, pursuant to section 490-JJJ.

§490-III. Mining and reclamation report

1. Filing requirement. A permittee shall file with the department a mining and reclamation report on or before March 15 of each year, during the period the mine is operating, during suspension of the mining operations, and during the postclosure monitoring period. The mining and reclamation report shall contain all of the following:

- A. A description of the status of mining and reclamation operations;
- B. An update of the contingency plan. The permittee shall provide a copy of the update to the municipality or county commissioners, as applicable;
- C. A report of monitoring results for the preceding calendar year;
- D. A report of the total tons of material mined from the mining area, and the amount of metallic product by weight, produced from the metallic mineral mine for the preceding calendar year; and
- E. A list of the reports required under subsection 3 for the preceding calendar year.

2. Notification requirement. A permittee shall promptly notify the department and each municipality having jurisdiction over the mining area and the affected area, or, in the unorganized territory, to the county commissioners for the county in which the mine is located, of any incident, act of nature, or exceedance of a permit standard or condition at a mining operation that has created, or may create, a threat to the environment, natural resources, or public health and safety.

3. Records. Records shall be retained as follows:

- A. Records upon which the mining and reclamation reports are based shall be preserved by the permittee for six years and made available to the department upon request.
- B. Records upon which incident reports under subsection 2 are based shall be preserved by the permittee for six years or until the end of the postclosure monitoring period, whichever is later.

§490-JJJ. Violations

1. Permittee required to correct violations. If the department determines that a permittee has violated this chapter, a rule adopted under this article, an order of the department, or a mining permit issued under this article, the department shall require the permittee to correct the violation and the department may pursue enforcement action pursuant to sections 347-A, 348 and 349.

2. Imminent endangerment. If the department determines that a violation under subsection 1 is causing or resulting in an imminent and substantial endangerment to the public health or safety, environment, or natural resources, the department shall take action necessary to abate or eliminate the endangerment. Such action may include one or more of the following:

- A. Revoking the mining permit as authorized by section 342, subsection 11-
- B. Issuing an order to the permittee requiring immediate suspension of activities at the mining operation, including the removal of metallic product from the site.
- C. Issuing an order to the permittee to undertake such other response actions as may be necessary to abate or eliminate the endangerment.
- D. Issuance of an emergency order as authorized by section 347-A, subsection 3.

3. Effect of revocation or suspension. The revocation of a mining permit or suspension of activities under subsection 2 does not relieve a permittee of the responsibility to complete closure, reclamation, operation and maintenance, monitoring, maintain financial assurance required under section 490-HHH, and undertake all appropriate measures to protect the environment, natural resources, and public health and safety.

7. Compliance with Maine Administrative Procedures Act. The department shall comply with the Maine Administrative Procedure Act, Title 5, chapter 375, in its actions under this section.

Sec. 2. 12 MRSA §550-A, is repealed.

Sec. 3. 36 MRSA §2866, subsection 3, is repealed.

Sec. 4. 36 MRSA §2866, subsections 2 and 4 are amended to read:

§2866. Mining Oversight ~~Corrective Action~~ Fund

1. Creation of fund. The Mining ~~Oversight Corrective Action~~ Fund, referred to in this section as the “fund,” is established as a nonlapsing fund administered by the Mining Excise Tax Trust Fund Board of Trustees, referred to in this section as the “board.” The board shall oversee and authorize expenditures from the fund.

4. Uses of fund. Money from the fund may be used only to fund ~~oversight corrective action~~ as defined in the mining rules adopted by the Department of Environmental

Protection and the Maine Land Use Regulation Commission, and expenses for site oversight. Corrective action Oversight includes, but is not limited to, remedial action related to: any and all expenses of the department or the department's agents or contractors related to site oversight, including costs of personnel and administrative costs and expenses necessary to administer, review and monitor corrective action.

- A. Contaminated ground water;
- B. Disposition of mining wastes;
- C. Reclamation defects on or surrounding the site; and
- D. Pollution control at the site.

Sec. 5. 38 MRSA §349-A is repealed.

Sec. 6. 38 MRSA §352, subsection 3, is amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. The maximum fee for processing an application may not exceed \$250,000, except that the maximum fee for processing an application under chapter 3, subchapter 1, article 9 may not exceed \$1,000,000. All staff of the department, the Department of Inland Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture, Food and Rural Resources and the Department of Marine Resources who have worked on the review of the application, including, but not limited to, preapplication consultations, shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application, including the costs of any appeals filed by the applicant and, after taking into consideration the interest of fairness and equity, any other appeals if the commissioner finds it in the public interest to do so. Any appeal filed by the applicant of an application fee must be to the agency of jurisdiction of the application. The costs associated with assistance to the board on an appeal before the board may be separately charged. The processing fee for that application must be the actual cost to the department, the Department of Inland Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture, Food and Rural Resources and the Department of Marine Resources. The processing fee must be distributed to each department that incurs a cost to be deposited in the account in which the expenses were incurred in that department to reimburse the actual cost to that department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit. Nothing in this section limits the commissioner's authority to enter into an agreement with an applicant for payment of costs in excess of the maximum fee established in this subsection.

Sec. 7. 38 MRSA §352, subsection 4-A, is amended to read:

4-A. Maximum Fees for nonferrous metal mining. Notwithstanding the fees for mining established in subsections 4 and 5, ~~the maximum fees for nonferrous metal metallic mineral mining include the following: are as follows:~~

- A. ~~The preapplication and processing fees are special fees, pursuant to subsection 3 The preapplication fee is \$20,000 until the one-time allocation made pursuant to section 1319-E, subsection 1, paragraph F, has been repaid. Thereafter the preapplication fee is \$10,000; and~~
- B. ~~— The processing fee is \$30,000; and~~
- C. ~~The annual license fee is \$50,000. \$10,000.~~

Sec. 8. 38 MRSA §353, subsection 1-A, is repealed.

Sec. 9. 38 MRSA §353, subsection 2, is amended to read:

2. Processing fee. Except for annual air emission fees pursuant to section 353-A and annual waste discharge fees pursuant to section 353-B, a processing fee must be paid at the time of filing the application. Failure to pay the processing fee at the time of filing the application results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner may not refund the processing fee if the application is denied by the board or the commissioner. If the application is withdrawn by the applicant within 30 days of the start of processing, the portion of the processing fee that was expended or committed by the department, the department's agents or contractors for the cost of processing the application, prior to the withdrawal of the application, shall be calculated, and the remainder of the processing fee not expended or committed must be refunded. ~~the processing fee must be refunded, except in the case of nonferrous metal mining applications. If an application for nonferrous metal mining is withdrawn by the applicant within 30 days of the date of filing, 1/2 of the application fee must be refunded.~~

Sec. 10. 38 MRSA §420-D, subsection 5, is amended to read:

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; article 9, the Maine Metal Mineral Mining Act; sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or 1319-X, waste facility licenses. When a project requires a storm water permit and

requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B.

Sec. 11. 38 MRSA §480-D, subsection 3, is amended to read:

3. Harm to habitats; fisheries. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether mining, as defined in section 490-CCC, subsection 6, will comply with this subsection, the department shall presume that there is no practicable alternative to the location of the mining activity that would be less damaging to the environment. All other analysis of alternatives associated with the activity, including alternative design and operational measures, may be considered by the department in its evaluation of whether the activity avoided and minimized impacts to the maximum extent practicable.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

- A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
- C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or

- E. Compensating for an impact by replacing the affected significant wildlife habitat.

Sec. 12. 38 MRSA §482, subsection 2, is amended to read:

2. Development of state or regional significance that may substantially affect the environment. "Development of state or regional significance that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that:

- A. Occupies a land or water area in excess of 20 acres;
- B. Is a ~~metallic mineral mining or advanced exploration activity as defined in this section~~ or an oil or gas exploration or production activity that includes drilling or excavation under water;
- C. Is a structure as defined in this section;
- D. Is a subdivision as defined in this section;
- F. Is an oil terminal facility as defined in this section; or
- J. Is an offshore wind power project with an aggregate generating capacity of 3 megawatts or more.

Sec. 13. 38 MRSA §482, subsection 2-B, is repealed.

Sec. 14. 38 MRSA §484, subsection 4-A, is amended to read:

4-A. Storm water management and erosion and sedimentation control. The proposed development, ~~other than a metallic mineral mining or advanced exploration activity,~~ meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. ~~A proposed metallic mineral mining or advanced exploration activity must meet storm water standards in department rules adopted to implement subsections 3 and 7.~~ If exempt under section 420-D, subsection 7, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm water quality standards adopted pursuant to section 420-D. For redevelopment projects only, the standards for storm water management in section 420-D are met if the proposed development is located in a designated area served by a department-approved management system for storm water as described in section 420-D, subsection 2, as long as the owner or operator of the parcel upon which the proposed development will be located enters into or obtains and remains in compliance with all agreements, permits and

approvals necessary for the proposed development to be served by such management system for storm water.

Sec. 15. 38 MRSA §485-A, subsection 1-C, is amended to read:

1-C. Long-term construction projects. The department shall adopt rules identifying requirements for a long-term construction project that allow approval of development within a specified area and within specified parameters such as maximum area and groundwater usage, although the specific nature and extent of the development or timing of construction may not be known at the time a permit for the long-term construction project is issued. The location and parameters of the development must meet the standards of this article. ~~This subsection does not apply to metallic mineral mining or advanced exploration activities.~~

Sec. 16. 38 MRSA §488, subsection 9, is amended to read:

9. Development within unorganized areas. A development located entirely within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, other than ~~a metallic mineral mining or advanced exploration activity~~, an oil terminal facility or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more that is not a community-based offshore wind energy project as defined in Title 12, section 682, subsection 19, is exempt from the requirements of this article.

Sec. 17. 38 MRSA §488, subsection 11, is amended to read:

11. Farm and fire ponds. A pond that is used for irrigation of field crops, water storage for cranberry operations or fire protection determined to be necessary in that location by the municipal fire department is exempt from review under this article. This provision does not provide an exemption for ~~mining or advanced exploration activity or~~ excavation for borrow, clay, topsoil or silt.

Sec. 18. 38 MRSA §490 is repealed.

Sec. 19. 38 MRSA §1319-E, subsection 1, paragraph F, is repealed.

Sec. 20. Land Use Regulation Commission rulemaking. By June 15, 2013, the Land Use Regulation Commission shall amend its rules relating to procedures and requirements for changes to land use subdistrict boundaries for metallic mineral mining activities to remove any provisions related to the permitting of metallic mineral mining activities regulated under the Maine Metal Mineral Mining Act established in the Maine Revised Statutes, chapter 3, subchapter I, article 9. The amended rules may only relate to the procedures and requirements necessary to review a rezoning application. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 21. Department of Environmental Protection rulemaking. By January 10, 2014, the Department of Environmental Protection shall provisionally adopt and submit to the Legislature for review rules related to the Maine Metal Mineral Mining Act established pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 9. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 22. Effective date. Except for sections 20 and 21 of this Act, this Act takes effect on June 1, 2014.

SUMMARY

This amendment is being posted for the purpose of receiving public comment. The amendment incorporates a number of proposals submitted to the Joint Standing Committee on Environment and Natural Resources during the course of the committee's worksessions. The committee has not taken a position on the substance of this amendment. The amendment creates a comprehensive statutory framework to replace current mining laws and rules and establishes the Department of Environmental Protection as the agency responsible for permitting and regulating the development, operation, and closure of metallic mining in the State.

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